



International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

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Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families

Concluding observations on the second periodic report of Chile*

1. The Committee considered the second periodic report of Chile (CMW/C/CHL/2) at its 445th, 446th and 447th meetings (CMW/C/SR.445, SR.446 and SR.447), held from 7 to 9 April 2021. At its 452nd meeting, held on 16 April 2021, it adopted the present concluding observations.

A. Introduction

2. The Committee welcomes the submission of the State party's second periodic report and the additional information provided during the dialogue by the delegation, which was headed by Juan Francisco Galli, Undersecretary of the Interior, and composed of representatives of various ministries, Senator José Miguel Insulza of the National Congress, Alejandro Soto of the Supreme Court, and the Ambassador and officials of the Permanent Mission of Chile to the United Nations Office at Geneva.

3. The Committee appreciates the online dialogue held with the high-level delegation, the extensive information provided by the State party's representatives and the constructive approach to the meetings, which allowed for joint analysis and reflection. The Committee is also grateful for the efforts made by the State party to submit replies and additional information within 48 hours of the dialogue. However, the Committee regrets the delay in the preparation of the report. Noting that this is the first online review that it has conducted, the Committee wishes to express its gratitude for the willingness shown by all the bodies involved and to acknowledge the efforts made by the State authorities, which are currently engaged in reforming the country's Constitution. The experience gained constitutes a very important precedent for forthcoming periodic reviews of State party reports.

4. The Committee acknowledges that Chile, as a country of origin of migrant workers, has made progress in protecting the rights of its nationals working abroad. However, it notes that, as a country of origin, transit, destination and return, the State party is facing an unprecedented situation owing to the increase in the migrant population. The Committee values the State party's effort to ensure the maximum provision of services for the migrant population by steadily increasing human and economic resources. However, the Committee notes with concern that, as a destination country, the State party appears to be facing a number of challenges in respect of the protection of the rights of migrant workers and members of their families.

5. The Committee notes that some countries where Chilean migrant workers are employed are not parties to the Convention, which may constitute an obstacle to the enjoyment by migrant workers of their rights under the Convention and that, in spite of this, the State party has continued to fulfil its obligation to support its nationals in those countries.

* Adopted by the Committee at its thirty-second session (6–16 April 2021).



B. Positive aspects

6. The Committee welcomes the following measures:
 - (a) The Migration and Aliens Act (Bulletin No. 8970-06) of 15 December 2020, promulgated on 12 April 2021;
 - (b) Decree No. 34, promulgating the International Labour Organization (ILO) Domestic Workers Convention, 2011 (No. 189) in 2016;
 - (c) The adoption of Act No. 20786 on working conditions in private homes in 2014;
 - (d) The adoption of Act No. 21609, establishing anti-discrimination measures, in 2012;
 - (e) The role played by the judiciary, in particular through the rulings of the Supreme Court and courts of appeal, in developing case law that has incorporated human rights standards in deportation processes and standards governing admittance to the proceedings for recognizing the refugee status of migrants and refugees, such as Supreme Court rolls No. 310-2021, No. 11.426-2021 and No. 450-2018-198-2019-34.34-2019;
 - (f) The “Chile Recognizes” project of 2017, through which Chilean nationality was granted to children born in Chile to parents with an irregular migratory status, marking an important step forward in preventing and eradicating statelessness.
7. The Committee welcomes the State party’s ratification of:
 - (a) The Protocol to the ILO Forced Labour Convention, 1930 (No. 29) in 2021;
 - (b) The Convention relating to the Status of Stateless Persons, in 2018;
 - (c) The Convention on the Reduction of Statelessness, in 2018.
8. The Committee wishes to highlight the establishment of and the activities carried out by a number of collegiate bodies, such as councils, working groups and committees, that have worked in a coordinated manner on programmes and projects devoted to migrants, and it acknowledges the State party’s efforts to coordinate the activities of all its institutions to comply with its obligations under the Convention. It also acknowledges the State party’s engagement in regional dialogue processes to address the migratory flows of people in South America.

C. Principal subjects of concern and recommendations

1. General measures of implementation (arts. 73 and 84)

Current context

9. **The Committee recommends that the State party protect the rights of migrants and members of their families, in particular their right to health, and mitigate the adverse effects of the coronavirus disease (COVID-19) pandemic in the light of the joint guidance note on the impacts of the COVID-19 pandemic on the human rights of migrants, issued by the Committee and the Special Rapporteur on the human rights of migrants. In particular, the Committee recommends that the State party guarantee equitable access to vaccination against COVID-19 to all migrants and members of their families, irrespective of their nationality, migration status or other prohibited grounds for discrimination in accordance with the recommendations issued by this Committee and other regional human rights mechanisms in the aforementioned joint guidance note.**

Legislation and application

10. The Committee welcomes the adoption of the Migration and Aliens Act, Bulletin No. 8970-06, on 15 December 2020, after eight years of discussion. However, the Committee notes with concern that the Constitutional Court, in its judgment of 29 January 2021, found several of the Act’s legal provisions to be unconstitutional. The provisions in question were

related to legal reservations (art. 27), penalties for employers (art. 117), the assisted return of unaccompanied children and adolescents (art. 132), administrative detention (art. 135), time limits on entry (art. 137), residence (art. 175) and parole (art. 176). While noting that the new Act proposes a number of positive institutional changes, such as the non-criminalization of irregular migration, the provision of additional protection and the digitization of services, the Committee is concerned that there is insufficient focus on the rights of migrants and members of their families, the protection of the rights of migrants in an irregular situation, regularization mechanisms, the right to due process and procedural guarantees, the recognition of refugee status and other forms of international protection, and access to social services.

11. The Committee urges the State party to publish the Migration and Aliens Act and its implementing regulations promptly, so that they may enter into force and, where necessary, be amended so as to be brought into full conformity with the Convention, in particular with regard to:

(a) The establishment of ordinary regularization mechanisms that are regulated by law within the State party, in accordance with article 69 of the Convention, and that apply to all migrants, irrespective of whether their migration status is regular or irregular;

(b) The rights of migrant workers in an irregular situation, in accordance with the Committee's general comment No. 2 (2013);

(c) The use of alternative measures to detention, either as a priority response to irregular migration, in accordance with the principle of detention as an exceptional measure, or as an alternative to deportation in cases of irregular migration;

(d) The use of administrative detention for migration-related matters as a measure of last resort and for the shortest possible period of time;

(e) The total prohibition of the detention of migrant children and adolescents, whether accompanied or unaccompanied, in accordance with joint general comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child;

(f) The guarantee of the right to due process in deportation procedures and the prohibition of collective deportation, as well as guarantees of due process, including the right to free legal assistance, translation services, and access to mechanisms by which to challenge decisions in migration procedures;

(g) Protection of the right to nationality for all children born in Chile, including those whose fathers and/or mothers have an irregular migration status;

(h) The protection of refugees, persons in need of additional protection and other persons in need of international protection;

(i) Access to social security benefits and allowances on an equal basis with nationals, in accordance with article 27 of the Convention.

Reservations

12. The Committee remains concerned about the State party's reservations to article 22 (5) and article 48 (2) and notes with regret that the State party refuses to consider withdrawing these reservations, despite the fact that court decisions have been issued in favour of expelled migrants and article 20 of the recently enacted Migration and Aliens Act provides that the State must take the appropriate measures to facilitate the right of foreigners to transfer income and savings obtained in Chile to any other country and to receive money or goods from abroad.

13. The Committee reiterates its previous recommendation (CMW/C/CHL/CO/1, para. 11) and invites the State party to consider withdrawing its reservations to article 22 (5) and article 48 (2) of the Convention.

Articles 76–77

14. The Committee notes that the State party has still not made the declarations provided for in articles 76 and 77 of the Convention, recognizing the competence of the Committee to receive communications from States parties and individuals.

15. The Committee reiterates its previous recommendation (CMW/C/CHL/CO/1, para. 13) and encourages the State party to make the declarations provided for under articles 76 and 77 of the Convention.

Ratification of relevant instruments

16. The Committee recommends that the State party ratify, as soon as possible, the ILO Migration for Employment Convention (Revised), 1949 (No. 97), and the ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143).

Policy and strategy

17. The Committee notes that the National Human Rights Plan has a section on migrants and refugees but is concerned about whether sufficient resources are allocated for the implementation of the Plan.

18. The Committee recommends that the State party allocate the human, technical and financial resources necessary for the effective implementation of sectoral commitments relating to the rights of migrant workers and members of their families in the National Human Rights Plan for 2017, in line with its obligations under the Convention.

Independent monitoring

19. The Committee is concerned that the National Institute of Human Rights does not have sufficient resources to carry out its mandate to protect the rights of migrant workers and members of their families effectively.

20. The Committee recommends that the State party provide the National Institute of Human Rights with sufficient human, technical and financial resources, in a timely manner, to enable it to effectively promote and protect the rights of migrant workers and members of their families. The Committee also recommends that the State party assign, with no exceptions, independent defenders to children and adolescents of migrant workers whose parents or guardians are involved in administrative or judicial proceedings that will affect their children's situation, so that the defenders can see to it that their rights are respected at all stages of the proceedings.

21. The Committee is concerned to note that the government authorities have not always provided the National Institute of Human Rights with the timely information that it needs to give legal assistance to migrants or refugees against whom deportation orders are in force. The Committee is also concerned to note that the Carabineros (police) hinder the Institute's ability to carry out its mandate at the border.

22. The Committee urges the State party to provide the National Institute of Human Rights with timely information on migrants and/or refugees involved in administrative expulsion proceedings and to ensure that the Carabineros are well aware of the Institute's mandate, including its declarations on the protection of the rights of migrant workers and members of their families, and that they ensure that the Institute is able to carry out its work, especially its working visits to the northern border in the Tarapacá region.

Training on and dissemination of information about the Convention

23. The Committee notes that the Department for Foreigners and Migration has a national training plan and that workshops have been held, but is concerned to note that the Convention is not directly cited and that nothing is being done to publicize the fact that the Convention is a legal instrument in force in the State party.

24. **The Committee recommends that the State party strengthen and expand mandatory, ongoing education and training programmes on Convention rights for officials from institutions that are responsible for migration issues, including law enforcement officers, border authorities, judges and prosecutors. In the light of the constitutional process under way in Chile, the Committee recommends that the protection of the human rights of migrant workers and members of their families be incorporated into the new Constitution in accordance with the Convention. It also recommends that the State party step up its engagement with the media in order to ensure the dissemination of information on migrants' rights and raise public awareness of these rights, especially in border areas.**

Participation of civil society

25. The Committee is concerned about the limited participation of civil society in the implementation of the Convention and the absence of civil society from advisory and decision-making bodies such as the Migration Policy Council, the establishment of which is provided for in the new Migration and Aliens Act. The Committee is concerned about the abolition of bodies involving civil society, such as the former Advisory Council for Migration.

26. **The Committee recommends that the State party take concrete measures to ensure the effective participation of civil society in the implementation of the Convention and its routine participation in standing mechanisms such as the Migration Policy Council.**

2. General principles (arts. 7 and 83)

Non-discrimination

27. The Committee notes the adoption of the Anti-Discrimination Act (No. 20609), in 2012 and the measures taken to promote the inclusion of the migrant population at the municipal level, such as the "Sello Migrante" (Migrant Seal) certification scheme and a pilot programme involving intercultural social mediators. The Committee is concerned, however, at the lack of information on the measures taken to prevent xenophobia and hate speech from being directed against migrant workers by public officials, in particular the Carabineros, as the training workshops held in 2016 to prevent discrimination at the border have proved insufficient. While noting the measures taken to protect migrant women victims of domestic violence, the Committee is concerned at the lack of information on measures to ensure gender equality in migration policies. The Committee is also concerned about the administrative measures adopted that institute specific requirements for migrants of Venezuelan and Haitian origin, such as the creation of specific consular visas. The Committee is particularly concerned about discrimination and violence directed at Haitian migrants, migrants from other continents and migrants of African descent on the basis of their skin colour.

28. **Recalling its previous recommendation (CMW/C/CHL/CO/1, para. 19), the Committee recommends that the State party:**

(a) **Reinforce measures promoting the care and inclusion of the migrant population locally and in border areas;**

(b) **Develop measures to eliminate xenophobia and discriminatory stereotypes in respect of migrant workers and members of their families, including in education and vocational training and through campaigns targeting public servants and the general public;**

(c) **Apply promptly and without exception the penalties in force for various acts of discrimination, in particular when committed by the Carabineros or border officials, in accordance with article 7 of the Convention;**

(d) **Ensure gender equality in migration policies, in particular by taking measures to eliminate discrimination against migrant women, including any form of gender-based violence against women and any infringement of their rights to health, employment and education;**

(e) **Ensure that administrative measures do not discriminate on the basis of the national origin of migrants, in particular against Venezuelans and Haitians.**

29. The Committee is concerned about the potential discriminatory effects of the humanitarian orderly return plan introduced in 2018, which has made the return of Haitians a priority and which allows for the voluntary return of persons to their countries of origin but prohibits return to Chile for nine years.

30. **The Committee recommends that the State party ensure that all returns of migrants within the framework of the humanitarian plan are indeed voluntary, fulfilling the requirements of a fully informed decision that is free of coercion and backed by the availability of sufficient valid alternatives, and that all migrants are able to benefit from the plan without discrimination and that the bar on returning to Chile is lifted.**

Right to an effective remedy

31. The Committee notes that the judicial and administrative bodies in the State party are the same for nationals and foreigners and that migrants, irrespective of their migration status, have access to the same courts. The Committee is concerned about the lack of information relating to migrant workers regarding:

(a) Any protection mechanisms for migrant workers and members of their families who file complaints, including migrant sex workers, in particular when complaints are made against the security forces, especially the Carabineros;

(b) The number and type of complaints examined by judicial and administrative bodies, the investigations carried out and the sentences handed down;

(c) Any cases in which legal assistance was provided;

(d) Any reparations granted to the victims of violations;

(e) Any steps taken to inform migrant workers and members of their families of the remedies available to them in the event that their rights are violated.

32. **The Committee recommends that the State party:**

(a) **Ensure due process and the protection of the rights of migrant workers in administrative and judicial proceedings, particularly in proceedings in which migrant workers, members of their families or their representatives file complaints of violations, abuse and ill-treatment or discrimination, irrespective of their migration status. In expulsion and deportation proceedings, the State party must ensure that a balancing test is carried out to assess the best interests of the child and the right to family life of migrant workers and members of their families. In migration proceedings concerning the rights of migrant children or the children of migrants, the State party must ensure that their voices are heard during any proceedings involving them or members of their families;**

(b) **Regularly collect information on:**

(i) **The number and type of complaints examined by judicial and administrative bodies, disaggregated by sex, age and nationality of the victim, migration status, type of offence or behaviour and the outcome of the judicial or administrative proceedings;**

(ii) **The number of victims, including migrant workers in an irregular situation, who have received legal assistance;**

(iii) **The number of victims, including migrant workers in an irregular situation, who have received reparations, including compensation;**

(c) **Take further measures to inform migrant workers and members of their families, in a language they understand, of the remedies available to them in the event that their rights are violated, in addition to the information available on the websites of sectoral entities;**

(d) **Ensure that migrant workers and their families have access to justice in transit and destination countries, irrespective of whether they are still residing in those countries, and that they have access to information on their rights before, during and after all administrative and judicial proceedings that have an impact on those rights, as well as to full reparation.**

3. **Human rights of all migrant workers and members of their families (arts. 8–35)**

Migrant women

33. The Committee takes note of the laws adopted on domestic work, in particular Act No. 20786, which makes adjustments to working hours, rest periods and remuneration and prohibits the compulsory wearing of uniforms in public places, and Ordinance No. 3750/0064, which stipulates that employers of women domestic workers may subscribe to family allowance funds and register those workers' dependants. The Committee is concerned about the lack of information on steps taken to monitor the situation of women migrant domestic workers, including the more than 40 per cent who are in an irregular situation, and on complaint mechanisms.

34. **Reiterating its previous recommendation (CMW/C/CHL/CO/1, para. 37), the Committee recommends that the State party:**

(a) **Intensify its efforts, through the Labour Directorate, to ensure greater and more systematic monitoring by labour inspectors of the working conditions of women migrant domestic workers, including those in an irregular situation, in line with the Committee's general comment No. 1 (2011);**

(b) **Ensure that women migrant domestic workers, including those in an irregular situation, have effective access to mechanisms allowing them to file complaints against their employers and that all abuses, including ill-treatment, are investigated and that victims receive protection and redress and, where appropriate, perpetrators are punished.**

Indigenous migrant women

35. The Committee is concerned at the lack of information on:

(a) The situation of indigenous migrant women deprived of their liberty by the investigative police, the Carabineros, the Prison Service, the criminal justice system and the hospital system (in the case of drug mules who ingest packages of drugs);

(b) The number of complaints received and investigated for cases of torture or cruel, inhuman or degrading treatment or punishment of indigenous migrant women, including the nature of the charges and the sanctions imposed.

36. **The Committee recommends that the State party safeguard the rights of indigenous migrant women deprived of their liberty and provide information on:**

(a) **The number and circumstances of indigenous migrant women deprived of their liberty by the investigative police, the Carabineros, the Prison Service, the criminal justice system and the hospital system (in the case of drug mules who ingest packages of drugs);**

(b) **The number of complaints received and investigated for cases of torture or cruel, inhuman or degrading treatment or punishment of indigenous migrant women, including the nature of the charges and the sanctions imposed.**

Migrant children and adolescents

37. The Committee notes that the State party guarantees the right to education for children and adolescents, regardless of their migration status, but is concerned at the precarity of residence permits. It is also concerned at the lack of information about the living conditions of children and adolescents who are unaccompanied or separated from their parents or caregivers and at the lack of information on measures taken to protect the children of migrant workers, including those in an irregular situation.

38. **The Committee urges the State party to:**

(a) **Promote the regularization of the migration status of migrant schoolchildren and adolescent students through special residence permits;**

(b) **Uphold the rights of children and adolescents, including children of migrant workers in an irregular situation, as well as those who are unaccompanied or separated from their parents or caregivers, in particular their rights to health, education, social services, non-violence and protection.**

39. The Committee is concerned at the lack of concrete information on the measures effectively implemented to address child labour among migrant children and adolescents, including the worst forms of child labour, and more specifically the lack of information on:

(a) The protection of children and adolescents from all forms of exploitation, especially the worst forms of child labour;

(b) Awareness-raising initiatives for the general public about the harmful effects of all forms of commercial sexual exploitation of children, with a special focus on the use, in prostitution and pornography, of children and adolescents, who are particularly vulnerable to exploitation;

(c) The incidence of child labour, taking into account the work of migrant children and adolescents.

40. **The Committee urges the State party to:**

(a) **Redouble its efforts to eradicate child labour among migrant children and adolescents, including children of migrant workers in an irregular situation, and ensure that legal action is taken against those who exploit them economically and that victims receive full reparation;**

(b) **Carry out awareness-raising initiatives for the general public about the harmful effects of all forms of commercial sexual exploitation of children, in particular the exploitation of migrant children and adolescents in prostitution and pornography;**

(c) **Establish a system for collecting data on child labour that takes into account the work of migrant children and adolescents;**

(d) **Draw on technical assistance in this regard from the International Programme on the Elimination of Child Labour of the International Labour Organization.**

Border management and migrants in transit

41. The Committee notes the information provided by the State party on the procedure for recognizing refugee status and the findings and recommendations of special investigation report No. 828/2019 of the Office of the Comptroller-General of October 2020, which describes irregularities committed by the migration authorities that hindered the processing of applications made between July 2018 and June 2019, including by delaying the process and imposing requirements for formalities that are not provided for in the current regulations. With regard to this procedure, the Committee is concerned about:

(a) The lack of information on border control measures and procedures in place for migrant workers;

(b) Situations such as the one that occurred in June 2019, in which hundreds of Venezuelans, including children and adolescents, remained stranded at the Tacna-Chacalluta and Pisiga-Colchane border crossing points as a result of new visa requirements, as such situations lead to an increase in irregular entries and expose people to a high risk of trafficking;

(c) The situation that occurred in the town of Colchane, in the Tarapacá region, in February 2021, where a significant increase in the number of arrivals resulted in a health emergency, evictions of migrants and refugees, the emergence of informal settlements, the use of the Armed Forces to control the border and the militarization of that control.

42. **The Committee recommends, in line with the Recommended Principles and Guidelines on Human Rights at International Borders, of the Office of the United Nations High Commissioner for Human Rights (OHCHR), that the State party:**

(a) **Increase the capacity of public officials providing services at border crossing points to ensure respect for the rights of all migrants and persons in need of international protection;**

(b) **Ensure that its border governance measures protect the rights of migrants and refugees and address and combat all forms of discrimination by State and private actors at international borders and are in accordance with the principle of non-refoulement and the prohibition of arbitrary and collective expulsion.**

Detention

43. The Committee takes note of the information provided by the State party regarding the administrative detention of migrants and is very concerned about:

(a) The use of detention for a period of 24 hours when an expulsion order has been issued, and not as a measure of last resort, in line with the protocol for the expulsion of foreign offenders signed by the Ministry of the Interior and the investigative police in 2013;

(b) The lack of information on alternatives to detention, including with regard to children and adolescents;

(c) The lack of specific information on the conditions of detention in the temporary custody facilities set up for migrants and members of their families facing expulsion;

(d) The fact that the authorities may withhold expired Chilean identity cards, passports and national identity cards, which could leave migrants and members of their families without documents;

(e) The lack of information on migrants and members of their families in detention.

44. **In light of the Committee's general comment No. 2 (2013), the Committee recommends that the State party:**

(a) **Ensure that the detention of migrants is an exceptional measure of last resort, that the grounds are specified in each case, with specific reasons why alternative measures cannot be implemented, and that the measure is reviewed within 24 hours by an independent and impartial judicial authority;**

(b) **Adopt alternatives to administrative detention for migrant workers and members of their families who are facing expulsion from the national territory;**

(c) **Ensure adequate and decent conditions in migrant detention centres, which should not resemble a prison in appearance or purpose;**

(d) **Ensure that the regulations implementing the new Act provide that migrants and members of their families subject to a detention order may retain their identification documents, even if they have expired;**

(e) **Collect and provide up-to-date data, disaggregated by age, sex, nationality, place of detention and reason for detention, on migrants and members of their families in detention.**

Torture

45. The Committee is very concerned at the allegation of torture of a Haitian migrant, classified as grievous bodily harm under article 330 of the Code of Military Justice, and at the lack of information on the investigation conducted, the prosecution of the alleged perpetrator, the penalties imposed and the reparation provided to the victim.

46. **The Committee urges the State party to guarantee the victim access to justice and due process and to provide information in its next report on the judicial**

proceedings and on the way in which the Haitian migrant's rights to justice and reparation were upheld.

Expulsion

47. The Committee is very concerned about:

(a) The material impossibility of appealing against an order of expulsion of a migrant issued by the Ministry of the Interior or the regional intendancies; the collective expulsion of 138 migrants in the Tarapacá region on 10 February 2021; and the administrative expulsion of 72 migrants and judicial expulsion of 66 migrants on 26 February 2021 on an Air Force flight;

(b) The fact that the 24-hour time limit for executing an expulsion order does not guarantee a migrant's right to due process or adequate consular protection, as evidenced during the incident of 26 March 2019 involving Colombian migrants;

(c) The use of certain tactics by the investigative police, who encourage migrants to turn themselves in by incorrectly informing them that they must do so in order to apply for refugee status and then subject them to administrative expulsion once they have turned themselves in;

(d) The large number of expulsions arising from proceedings where individual decisions were issued but where, in all cases, the expulsion orders were identically worded aside from the names of the persons to be expelled and the dates and places of entry. These expulsion proceedings and orders show that a case-by-case analysis was not carried out and that the migrants were not allowed to defend themselves within the framework of the proceedings; such expulsions therefore amounted to collective expulsions.

48. **The Committee recommends that the State party:**

(a) **Ensure that migrant workers who are subject to an administrative expulsion order are aware of and can exercise their right to appeal against the order and that administrative expulsion procedures are in full compliance with articles 22 and 23 of the Convention. In this regard, a process that may result in the expulsion of a migrant must be specific to that individual so that his or her personal circumstances may be assessed and the prohibition of collective expulsions may be enforced. Furthermore, such procedures must not discriminate on the basis of nationality, skin colour, race, sex, language, religion, political opinion, social origin or any other status, and the persons undergoing the procedure must be afforded the following minimum guarantees: (i) to be expressly and formally informed of the charges against them and the reasons for the expulsion or deportation. The person must at the same time be given information on their rights, such as the right to state their reasons and object to the charges against them and the right to request and receive consular assistance, legal advice and, if necessary, translation or interpretation services; (ii) to be able to submit their case to the competent authority for review in the event of an unfavourable decision and to appear before that authority for that purpose; and (iii) to be formally and reliably notified of any expulsion decision, which must be duly reasoned in accordance with the law;**

(b) **Guarantee, in law and in practice, the absolute prohibition of collective expulsions, such as those in which no objective assessment of each migrant's individual circumstances is conducted and migrants are not afforded differentiated treatment, as human beings, that takes into account their possible protection needs, and which are therefore arbitrary;**

(c) **Guarantee, in law and in practice, the principle of non-refoulement, which prohibits the forced removal of any person, in any manner whatsoever, to a country or territory where he or she would be at real risk of persecution or serious human rights violations or abuses. In the view of the Committee, this principle covers the risk of torture and cruel, inhuman or degrading treatment or punishment, including inhumane and degrading conditions of detention for migrants or lack of necessary medical treatment in the country of return, as well as the risk to the right to life (arts. 9 and 10 of the Convention). It also applies to situations where individuals would not be**

protected from onward refoulement. The Committee is of the view that migrants and members of their families should be protected in cases where expulsions would constitute arbitrary interference with the right to family and private life. Migrants and members of their families in an irregular situation with international protection needs should also be protected against expulsion;

(d) **Revise the 24-hour time limit for executing an expulsion order so that migrants have effective access to a procedure for challenging the expulsion decision, as well as adequate consular protection;**

(e) **Ensure that the procedures and practices of the investigative police are in accordance with the law and allow for the full exercise of rights;**

(f) **Regularly collect and provide up-to-date data, disaggregated by sex, age, nationality and/or origin, on migrant workers and members of their families who are subject to expulsion orders.**

49. The Committee takes note of the information provided by the State party, according to which 169 persons of Haitian nationality were not expelled but prevented from entering the country because they did not meet the criteria for obtaining a tourist visa, as set out in article 44 of Decree-Law No. 1094. However, the Committee is concerned at the lack of information regarding:

(a) How the procedural guarantees of the persons in question, including the provision of legal assistance, access to justice and the right to an effective remedy with suspensive effect, were upheld;

(b) Whether the State party coordinated its actions with the country of origin of the persons facing expulsion and whether consular assistance was provided to them, in line with the Convention;

(c) The inadequate conditions at Santiago International Airport, where several groups of Haitians were held for several days, without adequate access to toilets, food, health services or their luggage with their clothes and personal belongings;

(d) The investigation of the lawfulness of the procedure in accordance with the Convention.

50. The Committee recommends that the State party ensure that migrants who are expelled or refused entry into the national territory have access to legal assistance, the justice system and a remedy with suspensive effect, consular assistance, adequate sanitary conditions, food and their personal belongings. It also recommends that the State party conduct an investigation or pursue its investigation, as the case may be, into the lawfulness of the procedure applied in the case concerning the 169 persons of Haitian nationality, in accordance with the Convention.

Nationality

51. The Committee notes that 167 stateless persons have been granted Chilean nationality, as ordered by the Supreme Court, and that the Department for Foreigners and Migration, by communication No. 27601 of 2014, granted Chilean nationality to the children of migrants in an irregular situation who were born in the territory of the State party and who are at risk of statelessness. The Committee is concerned, however, that the recognition of nationality is not established by law.

52. The Committee urges the State party to recognize by law the Chilean nationality of children of migrants in an irregular situation who were born in the territory of the State party in order to avoid any risk of their becoming stateless.

Education

53. The Committee notes that, pursuant to Circular No. 16 of 2017, the Department for Foreigners and Migration established a special free-of-charge visa to allow children and adolescents to obtain access to education, irrespective of the migration status of their parents or guardians. The Committee is concerned to note that the enrolment rate for migrant children

and adolescents at different levels of the school system is 15 percentage points below the national average and that there is a lack of information on:

- (a) Programmes to facilitate the teaching of the local language to migrants, particularly those of Haitian origin;
- (b) Measures to promote appropriate learning methods, good treatment and non-discrimination in order to facilitate the effective inclusion of migrant children and adolescents in the education system.

54. The Committee recommends that the State party:

- (a) **Increase the resources available for teaching the local language to migrants, particularly those of Haitian origin;**
- (b) **Broaden the measures designed to promote the inclusion of migrant children and adolescents in the education system and improve their academic performance.**

Transfer of earnings, savings and belongings

55. While noting that the State party has bilateral social security agreements with 26 countries that provide for the export of pensions, the Committee is concerned to note that migrants from countries with which there are no agreements can withdraw their pension funds only if they have a technical or professional qualification. The Committee is also concerned about the lack of information on measures taken to facilitate the transfer of migrant workers' earnings, savings and belongings as well as on measures to facilitate and reduce the cost of transferring private funds.

56. Reiterating its previous recommendation (CMW/C/CHL/CO/1, para. 41), the Committee recommends that the State party:

- (a) **Ensure that migrants who have contributed to the social security system may export their pension funds, irrespective of the country of export or whether or not they have a technical or professional qualification;**
- (b) **Facilitate the transfer of migrant workers' earnings, savings and belongings and reduce the cost of transferring private funds.**

4. Migrants in a regular situation

Housing

57. The Committee is concerned about the lack of information on measures to combat and punish exploitation by landlords, measures to ensure adequate safe and healthy housing conditions for migrant workers and measures to facilitate access to housing subsidy programmes.

58. The Committee recommends that the State party combat and punish exploitation by landlords and ensure access to adequate housing, including social housing schemes, for migrants and members of their families in accordance with article 43 (1) (d) of the Convention.

5. Promotion of sound, equitable, humane and lawful conditions in connection with the international migration of workers and members of their families (arts. 64–71)

Trafficking in persons

59. The Committee notes the various measures taken by the State party to combat trafficking in persons, including the establishment of internal and international trafficking in persons as a separate offence in article 411 quater of the Criminal Code; the collection of data on investigations, judgments and assistance given to victims of trafficking in persons, in accordance with Act No. 20507 of 2011; the implementation of the 2015–2018 National Plan of Action against Trafficking in Persons; and the adoption of the 2014 Intersectoral Protocol on Assistance to Victims of Trafficking in Human Beings. While noting the information

provided during the dialogue on the 2019–2022 National Plan of Action against Trafficking in Persons, the Committee is concerned to note that:

- (a) There is a lack of publicly available information on the Government's current policy on trafficking in persons;
- (b) There is a lack of temporary shelters for male victims of trafficking in persons;
- (c) The conditions in the residences belonging to the National Service for Minors Network are overcrowded and unsuited to the task of providing the necessary support to child and adolescent victims of trafficking in persons;
- (d) There is a lack of concrete information on measures to ensure family reunification for victims of trafficking in persons;
- (e) There is a lack of information on the number of victims of trafficking and smuggling of migrants who have applied for temporary and/or permanent residence and the number of authorizations granted under article 33 bis of Decree-Law No. 1094 of 1975;
- (f) There are insufficient statistics on the complaints of trafficking in persons that have been received and investigated and the sanctions applied.

60. The Committee recommends that the State party, in accordance with the Recommended Principles and Guidelines on Human Rights and Human Trafficking of OHCHR:

- (a) Update the National Plan of Action against Trafficking in Persons to include clear timelines, indicators and monitoring and evaluation benchmarks in order to prevent and combat trafficking in persons;**
- (b) Set up temporary shelters for male victims of trafficking that provide medical care, psychosocial support and other measures to facilitate their social reintegration;**
- (c) Introduce professional and specialized child protection programmes for the physical and psychological rehabilitation and reintegration of child and adolescent victims of trafficking in persons and provide them with accommodation in shelters at which special child protection measures are in place;**
- (d) Take measures to ensure family reunification for victims of trafficking in persons, where relevant and appropriate, at both the international and national levels;**
- (e) Collect and regularly publish disaggregated information on the number of trafficked and smuggled migrants who have applied for temporary and/or permanent residence and the number of authorizations granted;**
- (f) Include in its next periodic report disaggregated data on the number of complaints, prosecutions and convictions in trafficking cases and the compensation received by victims.**

Regularization

61. The Committee takes note of the special regularization process that began on 23 April 2018 and enabled more than 155,707 persons, including many entire families, to regularize their migration status, provided that they had entered the country on or before 8 April 2018. It also notes the information provided during the dialogue with the State party on the intention to launch a new special regularization process in April 2021. However, the Committee remains concerned about:

- (a) The lack of a comprehensive policy on the regularization of migration status and the lack of a predictable regularization process for migrants and members of their families, including unaccompanied children and adolescents;
- (b) The legislative changes brought about under the new national migration policy to establish new temporary residence visas that reduce access to regular, safe, accessible and affordable migration channels;

(c) The regulation provided for in the new Migration and Aliens Act that leaves it to the discretion of the authorities to assess migrants' roots in the country and degree of social, family and labour integration and to decide whether mechanisms for regularizing their migration status should be made available;

(d) The lack of statistical data on residence permits granted by the State party, disaggregated by nationality, sex, age and migration status.

62. The Committee recommends that the State party:

(a) **Design and implement a comprehensive policy to ensure accessible and affordable regularization procedures for migrant workers and members of their families, including unaccompanied children and adolescents, who are in an irregular situation;**

(b) **Ensure that the new migration policy expands regular, safe, accessible and affordable migration channels by progressively liberalizing the visa regime and making certain visas more readily accessible and that it take steps to implement the recommendations of the joint statement for the development of a regional response to the massive arrival of Venezuelans to the Americas of the Inter-American Commission on Human Rights, and committees, organs and special procedures of the United Nations;**

(c) **Include in the next periodic report statistical data on residence permits granted by the State party, disaggregated by nationality, sex, age and regular or irregular migration status, including the residence permits granted to nationals of Argentina, the Plurinational State of Bolivia, Brazil, Paraguay and Uruguay under Circular No. 26465 of 4 December 2009 issued by the Undersecretary of the Interior.**

6. Dissemination and follow-up

Dissemination

63. **The Committee requests the State party to ensure the timely dissemination of the present concluding observations to the relevant State institutions, including to government ministries, the legislature, the judiciary and relevant local authorities, as well as to non-governmental organizations and other members of civil society.**

64. **The Committee recommends that the implementation of the Convention, in particular the action taken in follow-up to the present concluding observations, should be approached together with civil society organizations, and that the proposals these organizations make with respect to specific migration problems in Chile should be explored, given their deep understanding of the daily reality of migrants. In this regard, the Committee recommends that the State party set up a mechanism for monitoring and following up on the implementation of human rights treaty body recommendations, in particular those of the Committee, in coordination with the competent bodies and civil society, and for periodically assessing their implementation with the support of United Nations agencies and the National Institute of Human Rights.**

Follow-up to concluding observations

65. **The Committee requests the State party to provide, within two years (that is, by 1 May 2023), written information on the implementation of the recommendations contained in paragraphs 28 (non-discrimination), 38 (migrant children and adolescents), 48 (expulsion) and 62 (regularization).**

Next periodic report

66. **The Committee requests the State party to submit its third periodic report by 1 May 2026. In doing so, the State party may wish to follow the simplified reporting procedure. The Committee draws the State party's attention to its harmonized treaty-specific guidelines (HRI/GEN.2/Rev.6).**